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TAX EDGE

Monthly Tax & Regulatory Updates

September 2018

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Accounting | Taxation | Regulatory

Contents

Goods & Services Tax (GST)

Goods & Services Tax

Update on latest GST Council Meeting and Amendment Acts

Recently, the Central Board of Indirect Tax and Customs has issued various notifications and circulars to bring into effect the decisions of the last GST Council meeting and GST Amendment Acts.

Please Click Here to read our detailed GST Bulletin dated September 17, 2018 on the matter. Highlights of the Bulletin are mentioned below:

- Key amendments under CGST (Amendment) Act 2018 & IGST (Amendment) Act 2018
- Notification of Reconciliation Statement for the period July, 2017 to March, 2018
- Release of format of Annual Return for July 2017 to March 2018
- Extension in time limit for filling GSTR-1 and GSTR-3B
- Extension in time limit for filling GST Transitional Credit Returns
- Notification of applicability of TDS and TCS provisions effective October 1, 2018
- Extension in time limit for transactions with job workers
- Scope of Principal-agent relationship in the context of Schedule I of the CGST Act
- E-way bill in case of storing of goods in godown of transporter
- Clarification on Refund related issues
- Clarification regarding removal of restriction of refund of accumulated ITC on fabrics

Rate of Tax Collection at Source (TCS) is notified as 1% of net taxable supplies

The Central Government has notified that every electronic commerce operator shall collect TCS at a rate of 1% (0.5% as CGST and 0.5% as SGST / 1% as IGST) of the net value of intra-State taxable supplies / inter-state taxable supplies made through it by other suppliers where the consideration of such supplies is to be collected by the said operator.

Please Click Here to read Notification No. 52/2018 – Central Tax dated September 20, 2018
Please Click Here to read Notification No. 02/2018 – Integrated Tax dated September 20, 2018

Processing of refund applications filed by Canteen Stores Department (CSD)

Background:

Vide notifications dated 28th June 2017 the Government had specified the CSD under the Ministry of Defence, as a person who shall be entitled to claim a refund of 50% of the applicable central tax, integrated tax and Union territory tax paid by the CSD on all inward supplies of goods received by the CSD for the purposes of subsequent supply of such goods to the Unit Run Canteens of the CSD or to the authorized customers of the CSD. Identical notifications have been issued by the State Governments allowing refund of 50% of the State tax paid by the CSD on the inward supply of goods received by it and supplied subsequently as explained above

Procedure for filing and processing of refund claim:

To ensure expeditious processing of refund claims, Government has specified the manner and procedure for filing and processing of such refund claims as below:-

a) Filing application for refund
   - Invoice-based refund
   - Manual filing of claims on a quarterly basis

b) Processing and sanction of the refund claim

It is clarified that the CSD will apply for refund with the jurisdictional Central tax/State tax authority to whom the CSD has been assigned. However, the payment of the sanctioned refund amount in relation to central tax / integrated tax shall be made by the Central tax authority while payment of the sanctioned refund amount in relation to State Tax / Union Territory Tax shall be made by the State tax/Union Territory tax authority. It therefore, becomes necessary that the refund order issued by the proper officer of any tax authority is duly communicated to the concerned counter-part tax authority within 7 days for the purpose of payment of the remaining sanctioned refund amount.

Please Click Here to read Circular No. 60/34/2018-GST dated September 4, 2018 for details.

Goods & Services Tax

Waiver of late fees for specified taxpayers

Government has waived late fee payable due to failure to furnish Returns by due date by the following class of taxpayers:

- Registered persons whose return in FORM GSTR-3B for the month of October, 2017, was submitted but not filed on the common portal, after generation of the application reference number
- Registered persons who have filed the return in FORM GSTR-4 of the CGST Rules, 2017 for the period October to December, 2017 by the due date but late fee was erroneously levied on the common portal
- Input Service Distributors who have paid the late fee for filing or submission of the return in FORM GSTR-6 for any tax period between 1 January 2018 and 23 January, 2018.

Please Click Here to read Notification No. 41/2018 – Central Tax dated September 4, 2018

Government extends IGST exemption on imports by Export Oriented Units (EOUs) and Software Technology Parks (STPs) till 31 March 2019

Government has extended exemptions granted to EOUs and STPs from payment of integrated goods and services tax (IGST) and compensation cess on imports upto 31 March 2019. Earlier this exemption was valid upto 1st October 2018 only.

Please Click Here to read Notification No. 65/2018 – Customs dated September 24, 2018

Direct Tax

Direct Tax

Government extends due date for filing Tax return and Tax Audit Report from 30 September to 15 October 2018

Central Board of Direct Taxes ('CBDT') has extended last date for filing of income tax returns (ITRs) and tax audit report from 30 September 2018 to 15 October 2018 for all taxpayers liable to file tax return for Assessment Year 2018-19 by 30 September 2018. Liability to pay interest under section 234A of Income-tax Act for delay in filing of tax return, however, will persist if applicable.

Please Click Here to read the Press Release.

Filing of Tax Returns registers an upsurge of 71% upto 31st August, 2018

As per CBDT there has been a marked improvement in the number of Income Tax Returns (ITRs) filed during Financial Year 2018 (upto 31 August 2018, the extended due date of filing) compared to the corresponding period in the preceding year. The total number of ITRs e-filed upto 31 August 2018 was 5.42 crore as against 3.17 crore upt o 31 August 2017, marking an increase of 70.86%.A remarkable increase is seen in the number of ITRs filed by salaried Individuals (ITR-1& 2) and those availing the benefit of the Presumptive Taxation Scheme(ITR-4).

The increase in number of returns reveals a marked improvement in the level of voluntary compliance of taxpayers which can be attributed to several factors according to the Government, such as impact of demonetisation, enhanced persuasion and education of taxpayers as also the impending provision of late fee which would be effective on late filing of returns. This is indicative of an India moving steadily towards a more tax compliant society and reflects the impact of continuous leveraging of technology to improve taxpayer service delivery.

Please Click Here to read the Press Release.

Exemption to interest income on specified off-shore Rupee Denominated Bonds

CBDT issues press release announcing tax exemption for interest payable by an Indian company or a business trust to a non-resident / foreign co. in respect of rupee denominated bond issued outside India during September 17th, 2018 to March 31st, 2019.

Aimed at increasing inflow and reducing the outflow of dollarsfinance minister announced multi-pronged strategy to contain the current account deficit (CAD).

Interest payable by an Indian company or a business trust to a non-resident, including a foreign company, in respect of rupee denominated bond issued outside India before the 1st of July, 2020 is liable for concessional rate of tax of five percent. Consequently, section 194LC of the Income-tax Act, 1961 provides for the deduction of tax at a lower rate of five percent on the said interest payment.Accordingly, it has been decided that interest payable by an Indian company or a business trust to a non-resident, including a foreign company, in respect of rupee denominated bond issued outside India during the period from 17th September, 2018 to 31st March, 2019 shall be exempt from tax, and consequently, no tax shall be deducted on the payment of interest in respect of the said bond under section 194LC of the Act.

Please Click Here to read the Press Release.

Direct Tax

Rules notified for determination of Fair Market Value (FMV) for taxability on conversion of inventory into capital asset

The CBDT has notified the rules relating to the determination of ‘Fair Market Value’ of inventories converted into capital assets.

Background:

The Finance Act, 2018 has inserted clause (via) to Section 28 of the Income Tax Act, 1961 so as to provide that any profit and gains from the conversion of inventory into the Capital Asset or its treatment as capital asset shall be charged to tax as Business Income. It has also been provided that for this purpose the FMV of inventory on the date of conversion or treatment determined in prescribed manner shall be deemed to be the full value of consideration.

Rules for determination of FMV:

Government has framed the rules providing the manner in which FMV of the inventory is to be determined, as below. The inventory has been distributed into 3 categories as below:

- 1st category – For immovable property (land / building / both),Government’s circle rate for purpose of payment of stamp duty in respect of such property on the date on which the inventory is converted into, or treated, as a capital asset will be the FMV.
- 2nd category - For jewellery, archaeological collections, drawings, paintings, sculptures, any work of art, shares/securities, FMVto be calculated as per Rule 11UA(1).
- 3rd category -FMV for other properties shall be the price that such property would ordinarily fetch on sale in the open market on the date of conversion.

Please Click Here to read the notification.

Transfer Pricing / International Taxation

Transfer Pricing / International Taxation

CBDT releases annual report of Advance Pricing Agreement (APA) program for 2017-18

The CBDT has released the Annual Report 2017-18 of APAprogram of India. The APA program is a major initiative of the Government towards fostering a non-adversarial tax regime. The CBDT has concluded 219 agreements till March 31, 2018.

Please Click Here to read the annual report.

CBDT notifies protocol amending India-Portuguese DTAA

The CBDT has notified the provisions of Protocol entered between the Republic of India and the Portuguese Republic for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes of income which was signed on 24 June 2017

Please Click Here to read the notification.

Company Law

Company Law

Relaxation of additional fees and extension of last date of filing of Form BEN-2 (Beneficial Declaration of shares held in a company by ultimate shareholders)

The Government through circular dated 6 September 2018 has provided for extension of time limit for filing the BEN-2 e-form on Ministry of corporate affairs (MCA) portal. The time limit for filing the BEN-2 form would be 30 days from deployment of e-form BEN-2 on the MCA portal.

Please Click Here to read the circular.

Clarification on filing form BEN-1 (Declaration by Beneficial owner who holds or acquires significant beneficial ownership in shares)

The Government through circular dated 10th September, 2018 has provided few clarifications on the issues raised by stakeholders in filing Form No. BEN-1 in respect of Companies (Significant Beneficial Owners) Rules, 2018.

According to the circular Form No. BEN-1 would be revised and notified shortly. Due date of 10th September, 2018 for filing BEN-1 declaration would also be revised.

Please Click Here to read the circular.

Relaxation in fees for filing Directors' E- form DIR-3 KYC (Know Your Customer) up to 5th October 2018

The Government through notification dated 20 September 2018, has allowed the e-filing of Director e-form DIR-3 KYC with nominal fee of Rs. 500 from 21 September 2018 to 5 October 2018, post which a fees of Rs. 5000 shall be payable.

Please Click Here to read the notification.

Company Law

Issue of securities in dematerialized form by unlisted public companies with effect from 2 October 2018

The Government, through a notification dated 10th September 2018, has issued notification for amendment in Companies (Prospectus and Allotment of Securities) Rules, 2014.

Salient features of the notification:

Through this Amendments, Ministry of Corporate affairs (MCA) has made it mandatory for all Unlisted Public Companies to issue securities only in dematerialized form with effect from 2 October 18.

- Every unlisted public company should ensure that the entire holding of securities of its promoters, directors, key managerial personals has been dematerialized before issue of any fresh securities.
- The Shareholder of any such company would be able to transfer his shares only in the dematerialized form on or after 2 October 2018.
- The company shall make an application to the depository to facilitate dematerialization of all existing securities and shall secure International Security Identification Number (ISIN) for each type of security and shall inform all the existing.
- Further, the reconciliation of share capital audit report from a practicing company secretary shall also be submitted by all such unlisted public company on a half-yearly basis to the Registrar under whose jurisdiction the registered office of the company is situated.
- Every unlisted company shall ensure the timely payment of fees (admission as well as annual) to the depository and registrar to an issue and share transfer agent in accordance with the agreement executed between the parties

The major benefits of dematerialization of securities which will now be available to unlisted Public companies include:-

- Elimination of risks associated with physical certificates such as loss, theft, mutilation, fraud etc.
- Improving the corporate governance system by increasing transparency and preventing mal-practices such as benami shareholding backdated issuance of shares, etc.
- Exemption from payment of stamp duty on transfer.
- Ease in transfer, pledge etc. of securities.

Please Click Here to read the notification.

Company Law

Amendment in provisions for remuneration payable to Managing Director / Whole Time Director / Manager by a company having no profits

The Government, through a notification dated 12 September 2018, has issued notification for amendment in Schedule V as below

SN	Particulars	Old Provisions	New Provisions
1.	Applicability	Public Companies	Public Companies
2.	Limits of yearly remuneration	Effective Capital and respective yearly remuneration: (i) Negative or less than 5 Cr. = 30 Lakhs (ii) 5 Cr. and above but less than 100 Cr. = 42 Lakhs (iii) 100 Cr and above but less than 250 Cr. = 60 Lakhs (iv) 250 Cr. or more = 120 lakhs plus 0.01% of the effective capital in excess of 250 Cr.	Double the existing limits
3.	Limit basis category	2.5% of the current relevant profit Applicable to Managerial Person NOT being: • A holder of security of the nominal value of less than INR 5 Lacs • Employee or director of the Company during last two year appointment • Related to any director or promoter during last two year prior to appointment.	New Concept of Professional Director has been inserted. No limit on remuneration. Employees holding upto 0.5% of the paid-up share capital of the Company allotted pursuant to any scheme or ESOPs or by way of qualification NOT to be considered as interested.
4	Central Government approval	Required in the following cases: • Non-compliance of Schedule V, and • Payment of remuneration in excess of the double of the limits specified.	No change Professional directors are exempted (Professional Director- Managerial person who is functioning in a professional capacity)

Please Click Here to read the notification

Securities Exchange Board of India (SEBI)

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Amendment of Know Your Client (KYC) requirements and Eligibility Conditions for Foreign Portfolio Investors (FPIs)

SEBI has issued circulars dated 21 September 2018 amending KYC requirements and eligibility conditions for FPIs after considering interim recommendations from working group chaired by H. R. Khan and comments received from the public.

Please Click Here to read the Circular.

Reserve Bank of India (RBI) guidelines

Reserve Bank of India (RBI) guidelines

Launching of Online reporting platform through Single Master Form : Foreign Investment Reporting and Management System ('FIRMS')

Background:

Reserve Bank of India (RBI) in continuation of notification dated 7 June 2018 has launched a Single Master form (SMF) with effect from 1 September 2018. RBI has notified that all new filings for foreign investment in India will be through single online reporting platform for which the user manual was made available from 01 September 2018 onwards.

Salient features of the user manual:

- For online reporting, the applicant needs to register himself separately under business user category. Every business user has to be e-KYC verified before any reporting can be made in the Single Master form.
- Where the entities have not been able to register for the Entity master, they may do so from 1 September 2018. However, they may provide the reasons for not registering within the time period along with the authority letter.
- With the implementation of SMF, the reporting of Foreign Direct investment (FDI), which is presently a two-step procedure viz., ARF and FC-GPR is merged into a single revised FC-GPR.

Please click here for the user manual.

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